

IDAPA 25 - IDAHO OUTFITTERS AND GUIDES LICENSING BOARD

25.01.01 - RULES OF THE IDAHO OUTFITTERS AND GUIDES LICENSING BOARD

DOCKET NO. 25-0101-1201

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Sections 67-5220(1), 36-2107(b) and (d); and 36-2110 and 36-2119 Idaho Code.

MEETING SCHEDULE: The Board intends to conduct public involvement opportunities throughout the state by mid-year 2013 where written and oral comments will be accepted. The date and location of those meetings have not been determined at the time of this notice. Additional notices indicating the time and location will be published.

The Board intends to hold a summary meeting in Boise where a final opportunity for written or oral comments will be provided. A notice indicating the time and location will be published.

Finally, the Board intends to ask for additional input from Sportsman organizations, Landowner Organization and Outfitter Organizations who have previously expressed interest in this matter.

METHOD OF PARTICIPATION: An updated copy of the draft rules under consideration and other related information will be maintained on the Board's website (<http://oglb.idaho.gov/rules/promulgations.html>) as the Board moves through this negotiated rule making process.

Written comments may be submitted at the aforementioned meetings or to the Idaho Outfitters and Guides Licensing Board at licensing@oglb.idaho.gov or the Idaho Outfitters and Guides Licensing Board, 1365 North Orchard, Room 172, Boise, Idaho 83706. For administrative purposes, the Board asks that written comments be limited to one 8 1/2" x 11" type written page or e-mail to no more than 750 words. All written comments must be directed to the undersigned and must be delivered on or before April 26, 2013.

E-MAIL	STREET ADDRESS
licensing@oglb.idaho.gov	The Idaho Outfitters and Guides Licensing Board 1365 North Orchard, Room 172 Boise, ID 83706

Instructions for oral presentations to be made at the aforementioned meetings will be provided in the notices.

DESCRIPTIVE SUMMARY: Idaho law states that an outfitter is "any individual, firm, partnership, corporation or other organization or any combination thereof, who, while engaging in any of the acts enumerated herein in any manner: (1) advertises or otherwise holds himself out to the public for hire; (2) provides facilities and services for consideration; and (3) maintains, leases, or otherwise uses equipment or accommodations for compensation for the conduct of outdoor recreational activities limited to the following: hunting animals or birds; float or power boating on Idaho rivers and streams; fishing on Idaho lakes, reservoirs, rivers and streams; and hazardous desert or mountain excursions." Section 36-2102, Idaho Code. This includes private landowners.

In 1992, the Idaho Supreme Court (*State v. Koller*, 112 Idaho 409) held that the outfitting and guides act regulates commercial outfitting whether it's occurring on public or private lands, and that the State of Idaho has jurisdiction. As the result, private land owners have been licensed as outfitters themselves, have designated agents (including existing outfitters) as employees to provide facilities and services, and have leased lands to others for outfitting purposes.

However, beginning in 1989, the Board imposed a "moratorium" where outfitter licenses would not be issued for outfitted/guided waterfowl or turkey hunting, other than for a few licenses that were grandfathered in. This came as the result of the IDFG and sportsmen groups expressing concern over the potential loss of public access to private lands for hunting use, which they felt was significantly due to landowners leasing or in some way "entering into commercial agreements" for exclusive access to their private lands with individual persons, clubs or organizations or

licensed outfitters.

In 2009, the IOGLB determined that due to continued interest from land owners, and outfitters hoping to provide these services to the public, this moratorium put the IOGLB and the State of Idaho at risk of a successful legal challenge. The Board's attorney has expressed concern that the current law and Board rules do not provide present support for the moratorium should someone apply to outfit turkey or waterfowl.

The IOGLB contends that outfitting in itself provides to the public an opportunity to hunt these species. The Board also contends that facilities and services normally provided by a licensed outfitter that are of benefit to the public and desired by them, cannot be provided by any person, business or organization or land owner in the State of Idaho who has not been properly licensed. The Board has concluded that if there is truly a "public" access issue, then, it is important not to narrowly focus on limiting the licensed outfitters who can facilitate and provide access to private lands where the public can hunt and fish.

IDFG and IOGLB agreed that they have lacked a clear understanding of this phenomenon, and in 2011 and 2012 launched a study to determine the realities of this matter, and in particular with the respect to waterfowl and turkey hunting. The study showed that the effect of landowners leasing or in some way "entering into commercial agreements" for exclusive access to their private lands with individual persons, clubs or organizations or licensed outfitters was minor in the most highly sought areas in the State. It showed that instead, landowners who choose to restrict their lands did so for a variety of reasons, but most continued to be willing to provide access to those members of the public that asked them for it. It also showed that those who had not commercialized hunting or fishing on their private holdings were unlikely to do so under any circumstances.

The IOGLB and IDFG agree that in many instances, private landowners control the public access to Idaho's fish and wildlife, and that uncontrolled commercialization can lead to increased competition from the public for access which in certain instances can also lead to greater restrictions. Therefore, the intent of this rule is to provide a measured, but reasonable approach where landowners may continue to provide outfitted facilities and services to the public themselves, or where they may work with some other business entity who might lease their land and provide outfitted facilities and services to the public on their behalf.

An advisory group organized by the Directors of the Idaho Department of Fish and Game (IDFG) and the Idaho Outfitters and Guides Licensing Board (IOGLB) that was comprised of private land owners, sportsmen groups and outfitters organized and met in 2010 and 2011 and worked through all the issues, but failed to reach agreement on whether, and to what degree, additional outfitting for turkey and/or waterfowl hunting should be allowed. In the end, the groups represented stayed rigid in their positions. Their collective group positions prevented members from reaching a compromise solution. Nevertheless, the decision space for a compromise policy by the Board (and Commission) has been described quite clearly. The draft rule is generated from the near consensus solution within the framework of that group's efforts.

As the result, the Board decided to initiate a negotiated rule making process that would carry through the remainder of calendar year 2012 and into 2013 in order to have adequate time to obtain and consider public input and in order to make an appropriate decision on a final draft rule to be proposed to the 2014 legislature.

These rules will clarify existing rule 25.01.01.011.01 and outfitter licensing as it pertains to private membership organizations. This rule has been a source of concern due to ambiguity in existing language. More importantly, they, for the first time, establish rules in a new section 3, which clarifies when a private land owner is required to obtain an outfitter license. Private landowners charging a trespass fee, which historically has been acceptable to this Board, is now clarified as such and that acceptability is included in this rule. Furthermore, these rules clarify that with an outfitter's license, that same landowner can legally advertise and provide outfitted facilities and services or that they can lease land to an additional party who then may be licensed as an outfitter to do the same.

These rules for the first time establish statewide "policy" for considering applications, licensing and setting limitations for outfitted turkey and waterfowl hunting. These rules focus on establishing measured public access opportunities on private land in "high conflict areas" that may be best made possible by a land owner licensed as an outfitter or someone else leasing their land for that same purpose. In those "high conflict areas" guided services provided by the licensed outfitters would be significantly limited or prohibited altogether in certain instances. In other areas, with less potential for conflict and public access opportunities, the provision of outfitted service such as

guiding could be more extensive. Areas and limitations will be determined by the Board in cooperation with the Idaho Department of Fish and Game.

Furthermore, these rules clarify that licensing outfitted turkey and waterfowl hunting on public lands or waters would be considered by the Board only after analysis done by the appropriate agency managing the public resource in question.

Finally, these rules call for decisions for licensure for outfitted turkey and waterfowl hunting to be made by the Board after considering input from the Idaho Department of Fish and Game and allow for additional limits or restrictions beyond those mentioned above.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING COPIES: For assistance on technical questions concerning this negotiated rulemaking or to obtain a copy of the preliminary draft of the text of the proposed rule (434.2), contact the Idaho Outfitter and Guides Licensing Board, 208-327-7380.

All written comments must be directed to the undersigned and must be delivered on or before April 26, 2013.

DATED this 24th day of August, 2012.

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Boise, Idaho 83706
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